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*Helping People
Help the Land*

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To Be Sent Via Electronic Mail

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MINNESOTA BULLETIN NO. 300-6-24

SUBJECT: LTP – EQIP – Contracts and Waivers

Purpose. To provide MN policy on completing and canceling contracts.

Expiration Date. September 30, 2006

Offices continue to work to review and follow-up on contracts. The priority option is for offices to move contracts to a Completed status. As such, completed practices, both cost-shared and non-cost shared should be certified. Where appropriate, practices that are no longer viable or no longer needed should be deleted. Review the process key previously sent out and included here again.

If the contract cannot be moved to Completed and no further progress can be made on the items, the contract should be Canceled or Terminated. By definition, Canceled contracts are either at the request of the participant or by mutual agreement. Terminated contracts are an adverse action initiated by the agency due to the contract being in violation of the contract provisions.

Canceled or Terminated EQIP contracts are subject both to refund of cost share and cost recovery. Other programs have differing policies regarding refunds and cost-recovery. The attached excerpt from the Conservation Programs Manual (CPM 516.116) describes how the refund or cost-recovery varies by the program year and appendix. For those cases requiring cost-recovery, the Conservation Program Contracting excerpt shows the percentage by contract year (CPM 512.58(b)).

While Designated Conservationists (DC's) are authorized to Cancel a contract, only the State Conservationist can waive the refund or cost recovery provisions. This waiver must be based on the participant's good faith effort to comply with the contract and/or hardship preventing the participant from complying with the contract.

The attached revised Worksheet 1 requires the DC to quantify the participant's good faith effort and/or hardship. This worksheet must be used for all future cancellations and terminations.

As a starting point, the DC must assume that all canceled/terminated contracts will require the full cost-share refund and 20% cost-recovery. Consider and indicate on the worksheet whether completed practices can stand alone and function as intended. Then quantify the good faith effort and/or hardship for the request. For voluntary cancellations, the participant should document their effort and/or hardship on their request to cancel.

Use the following guidelines to quantify good faith:

- 1 = No action taken by the participant to implement any of the contract provisions.
- 3 = The participant has completed at least 50 % of his contract items. This includes both cost-shared and non-cost shared items, but NOT technical assistance (TA) items.
- 5 = The participant has completed at least 80 % of his contract items. The participant worked with NRCS or TSP to develop plans and pursued preliminary steps needed to install the item.

Use the following guidelines to quantify hardship:

- 1 = No known hardship.
- 3 = Financial difficulty or significant health concerns
- 5 = Bankruptcy, death, terminal illness, natural disaster, or involuntary loss of control of land

DC's will complete the worksheet and provide to their ASTC(FO) for concurrence. Upon receipt of the completed worksheet, the State Office will use the rankings for good faith and/or hardship as provided by the DC to determine the proportion of refund or cost recovery to be waived. So, for example a rating of 3 will result in 3/5 of the cost recovery being waived. In cases where both good faith and hardship are applicable, both will be used to calculate the waiver.

Questions should be directed to your ASTC(FO) or from the area level to Tim Koehler, Assistant State Conservationist.

WILLIAM HUNT
State Conservationist

Enclosure

DIST: AC
DC
ARC
EQIP State Office Team

515.116 Recovery of Costs**a Cost-Recovery**

This payment is for recovery of NRCS administrative costs and technical services and is not a penalty (otherwise known as liquidated damages). The participant may be assessed a percentage of the total EQIP contract obligations for a terminated contract where any of the following apply:

Termination was due to fraud.

The participant voluntarily requests termination.

The participant voluntarily loses control or transfers all or part of the land under contract, and there is no successor-in-interest.

Termination due to non-compliance with contract provisions.

b Amount of Cost-Recovery

The amount of cost-recovery is up to 20 percent of the total funds obligated on form CCC-1200 at the time of contract termination, and will be an amount over and above repayment of technical (if TSP was utilized) and Financial Assistance costs paid to participants.

Note: With justification, the NRCS State Conservationist has the option to waive all or part of Recovery Costs. State Conservationists should consider the following when determining the amount of cost recovery:

The participant's involuntarily loss of control of the land under contract.

A proportion which reflects the hardship beyond the participant's control that has prevented compliance with the contract.

A proportion which reflects the good faith effort of the participant to comply with the contract.

c Refund of EQIP Funds

EQIP FA funds and TA funds, for Technical Service Providers, will be refunded in accordance with the provisions of the CCC-1200 Appendix included as part of the contract when originally approved:

IF ...	THEN...	
The CCC-1200 Appendix is dated 12-31-98 or earlier (pre-2002 Farm Bill contracts):	IF...	THEN...
	No practices were implemented and no payments made...	There will be no refunds of payments and no assessment of liquidated damages.
	Practices were implemented and payments made...	The refund will be the total of funds previously paid plus interest from date of disbursement plus liquidated damages. Liquidated damages must be calculated by multiplying 25 percent by the sum of payments previously disbursed.

440- Conservation Programs Manual

The CCC-1200 Appendix dated 7-15-02 or 8-7-02:	IF...	THEN...
	No practices were implemented and no payments made...	There will be no refunds of payments. Neither liquidated damages nor cost-recovery apply to these contracts.
	Practices were implemented and payments made...	The refund will be the total of funds previously paid plus interest from date of disbursement.
The CCC-1200 Appendix dated 7-03:	IF...	THEN...
	No practices were implemented and no payments made...	The participant will be assessed a cost-recovery payment to offset administrative costs in an amount equal to up to 20 percent of the total financial and technical assistance obligated to the participant in the EQIP contract at the time of contract termination.
	Practices were implemented and payments made...	The participant will be assessed a cost-recovery payment to offset administrative costs in an amount equal to 20 percent of the total financial and technical assistance obligated to the participant in the EQIP contract at the time of contract termination plus the amount of payments from the date of disbursement.
AND...	THEN...	
For any contract, the State Conservationist might determine that any refund of payments made may be reduced by either of the following	IF...	THEN...

	<p>A proportion that reflects either:</p> <ul style="list-style-type: none"> – The good faith effort of the participant to comply with the contract, <p>or...</p> <ul style="list-style-type: none"> – That reflects the hardship beyond the participant's control that has prevented compliance with the contract. 	<p>Where the NRCS State Conservationist determines that any refund owed can be reduced, the reduction will be based on all of the following:</p> <ul style="list-style-type: none"> – Assurance that failure to perform the remaining practices on the contract will not impair the effectiveness of those performed, and – Assurance that performed practices will provide conservation or environmental benefits consistent with EQIP goals and objectives and will be operated and maintained by the producer for required program life, and – Assurance that performed practices will be operated and maintained by the producer for the service life of the practice.
<p>NOTE: Service life of the practice is the same as Lifespan or the period of time during which a conservation practice is to be maintained and used for the intended purpose.</p> <p>See CPM Section 515.141(a) for required Service Life.</p>		

512.58 Recovery of Costs**b) Liquidated Damages**

Liquidated damages is an amount contractually stipulated as a reasonable estimation of actual damages to be recovered by one party if the other party breaches the terms and conditions of the contract and is the sum fixed as the measure of damages for a breach, whether it exceeds or falls short of the actual damages. As such, an assessment made by NRCS of liquidated damages does not legally constitute a penalty as the amount recoverable through this assessment does not represent the damages that have actually occurred, but as a sum named as such. Therefore, the assessment of liquidated damages does not constitute any penalty for the breach, but only serves as a recovery of NRCS administrative and technical service costs forgone (Blacks Law Dictionary, 7th Edition, Garner, Bryan A, Editor in Chief, West Group Publishing, page 395).

The participant may be assessed a percentage of the total CPC financial assistance obligations for a terminated contract where any of the following apply:

Termination was due to fraud, or the use of a scheme or device by the participant.

Participant voluntarily requests cancellation.

Participant voluntarily loses control or transfers all or part of the land under contract, and there is no successor-in-interest.

Termination was due to non-compliance with the specific contract provisions.

The amount of liquidated damages is up to 20 percent of the total financial assistance funds obligated on the CPC at the time the contract is terminated, and will be an amount over and above repayment of financial assistance costs paid to participants. The estimate of NRCS administrative and technical service costs is based on a national model that distributes most of these costs within the first 4 years of a contract. Use the CPC Appendix, the specific program regulation, and following table to estimate NRCS costs for establishing the maximum assessment of liquidated damages:

Year of Contract	Maximum Liquidated Damages Assessment (%)
1	7.5
2	15
3	18
4	20
5+	20

With justification, the NRCS State Conservationist has the option of waiving all or part of the liquidated damages. While it is the participant's responsibility to request a reduction in the amount of cost recovery, State Conservationists should document whether a total or partial waiver of the recovery amount has been considered, along with an explanation for granting or denial of this relief. State Conservationists may consider the following when determining the recovery amount:

The participant's involuntary loss of control of the land under contract.

A proportion that reflects the hardship beyond the participant's control that has prevented compliance with the contract.

A proportion that reflects the good-faith effort of the participant to comply with the contract.

The Wildlife Habitat Incentives Program (WHIP) does not include any regulatory provisions, nor are there any terms or conditions included in the CPC Appendix for WHIP that allows an assessment of liquidated damages. Therefore, NRCS will not assess liquidated damages for termination of a WHIP contract.